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STATUTES

"ADMINISTRATIVE PROCEDURE ACT" Public Law 404 79th Congress Chapter 324—2d Session S.7 AN ACT to improve the administration of

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justice by prescribing fair administrative procedure. 7

Pg. 8—(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

"La Follette-Lloyd Act" of August 24, 1912", Amended by Public Law 623 80th Congress Chapter 447, 2d Session S. 1486 an act to provide for payment of salaries covering periods of separation from the Government service in the case of persons improperly removed from such service. 7, 18

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28 U.S.C. § 1254 (1) 2
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IN THE

Supreme Court of the United States

October Term, 1957

No.

ANDREW J. EASTER, *Petitioner,*

v.

THOMAS S. GATES, JR., Secretary of the Navy,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on January 20, 1957, and the order of said Court entered on July 24, 1957, denying a petition for rehearing.

OPINIONS BELOW

The order of the United States District Court for the District of Columbia denying respondent's motion for summary judgment and granting petitioner leave to file an amended complaint was filed on October 28, 1952, C. A. No. 1307-52* (Pet. App. 4A) the suit was abated by consent and dismissed March 9, 1954 (Pet. pet. p. 8). The reinstituting of this case, C.A. No. 1174-54, with the con-

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* Judge Youngdahl: *"I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial."* (Pet. pet. pg. 22)

sent of counsel, was on March 19, 1954.‡ (Pet. brief app. 2A). The order of Court was filed on June 26, 1956, granting respondent's motion for summary judgment (Pet. App. 6A). The motion to set aside the order and reinstate cause was denied October 1, 1956 (Pet. App. 7A). The Court of Appeals for the District of Columbia Circuit affirmed the District Court on June 20, 1957, (Pet. App. 9A) and the petition for rehearing was denied July 24, 1957 (Pet. App. 10A).

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was made on June 20, 1957, a copy thereof is appended to this petition in the appendix at page 9A. An order denying the petition for rehearing appears in the appendix at page 10A. The jurisdiction of this Court is envoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

I. Was the evidence so one-sided as to justify summary judgment for the respondent, or did there exist any substantial issue of material fact?

II. Was petitioner's removal legal and valid?

III. Did the Court below err in granting the respondent's motion for summary judgment on the respondent's claim that the action was barred by laches?

GENERAL STATEMENT

1. Petitioner has diligently sought redress in this case.* Twice within this period, on March 25, 1952, C.A. No. 1307-52 was filed and dismissed by consent of counsel on March 9, 1954, and a new action was filed within *ten days* on March 19, 1954, C.A. No. 1174-54, also by consent of respondent's counsel.

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‡ Brief (No. 13,631) for Appellant and Joint Appendix in the United States Court of Appeals filed herewith.

* 4 different Secretaries of the Navy, served during these proceedings, which made it necessary for the petitioner to file 2 actions and 2 separate motions to substitute party defendant.

The petitioner has been an employee of the Department of Navy for about fifteen years in addition to other experience in private ship yards including his services in World War I. On December 9, 1920, the petitioner was employed at the Philadelphia Navy Yard as a Grade A draftsman, developing the arrangement plans for a 250 ton craneship and the conversion of a battle cruiser to an aircraft carrier, and resigned on November 11, 1921, due to disarmament. On January 9, 1928, he was appointed as a Design Draftsman, duties of a checker, by the Office of the Superintendent Constructor, Navy Department, Philadelphia, Pennsylvania, where he was transferred on September 11, 1928, to the Norfolk Navy Yard due to lack of work. There he made arrangement plans for the modernization of a battleship and upon completion, resigned April 12, 1929. January 16, 1939, the petitioner was employed by the Bureau of Construction and Repair of the Navy Department, War Plans Section 456, Washington, D.C. as a Chief Engineering Draftsman SP-8, to prepare confidential contract plans for the conversion of merchant vessels to naval auxiliaries, etc. During his employment he made advancement and rendered outstanding services by reason of his efficiency ratings and particularly his record in the design and production of plans (Pet. Brief bottom of p. 15) where uncontested records show he *devised, planned and drew the first or basic plans of most of the naval auxiliaries, and at least 73% of the design work and 50% of the actual production as key engineer in a section of eight men assigned to the same work,* and who originally worked overtime, evenings, Saturdays and Sundays without compensatory pay, and more particularly his beneficial suggestion of a "Merchant Naval Vessel" (Pet. brief p. 14 - 2d para.) which was submitted about June 20, 1940, to the Navy Department and was used as the basic principal for the design and conversion of a tanker to an

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All emphasis supplied unless otherwise indicated.

auxiliary aircraft carrier, later known as the *Baby Flat Top* which is still in operation in the United States Navy, and the adoption of the idea by the British Admiralty for the design and construction of their Merchant Aircraft Carriers used in World War II (see Petitioner's brief page 40A para. 13 and Pet. app. p. 10B, 14B-15B, 17B.

On June 25, 1941, petitioner submitted to the Navy Department for consideration an All Purpose Ship via beneficial suggestion (Pet. app. 17B) and at this time the agency was designated as the Bureau of Ships, Conversion Section 459 and petitioner was promoted to an Associate Engineer (N.A.) P-3, and continued to design and prepared contract plans for naval use until September 24, 1942, when he was promoted to an Engineer (N.A.) P-4, during this period the petitioner was given a good plus or a very good efficiency rating. On May 4, 1945, the petitioner was given a decision by the Efficiency Rating Board of Review, Navy Department as a result of an appeal of a Very Good efficiency rating for 1944, adding element (10) (Presentation of ideas and facts) (Pet. app. 4B).

Robert W. Bruce, the petitioners immediate supervisor had resented the above appeal, thereafter on April 18, 1945, the petitioner's efficiency rating was reduced to an *Unsatisfactory*, on June 15, 1945, Admiral Cochran, the Chief of the Bureau, held up the unsatisfactory rating, and made it possible to appeal such efficiency marks to prevent discharge etc. Breinert B. Madsen, a co-worker, eventually substituted in Bruce's absence, continued the same practice until the office was abolished on March 29, 1946, due to lack of work status. Madsen and the chief and assistant chief were the only foreign born employees in the section. All employees of this section were transferred to other offices throughout the bureau with the same grade and pay except the petitioner, whose time was devoted day and night in devising schemes for plans for

the welfare of the Navy (see petitioner's Schedule of Performances—"Combined Merchant Naval Vessel" and Comments from various agencies (Pet. app. 8B-17B).

The petitioner was reduced in salary and grade, P-3, in spite of his being qualified as a P-5 by the Civil Service Commission (Pet. brief app. 45A) and was transferred, carrying a FAIR efficiency mark from the previous office on April 29, 1946, to the Damage Stability Section 447-M Scientific, where he acquainted himself with the procedures required of the section. While there he discovered that it required the services of two men, Pokodner and Britt, who devoted two months of their time to correct a model plan, due to indecisions, which plan was drawn up before petitioner was assigned to this section. *"He has been chosen for doing all the later models."* (Pet. p. 16, p. 124) and presented a procedure whereby all persons who had a special interest in the model plan could work cooperatively by marking up a preliminary print until they all agreed, thereby eliminating confusion.

On July 26, 1946, petitioner received a GOOD efficiency rating with 4 plus marks, one for element (4) (6) (16) (17), on April 3, 1947, he received a VERY GOOD efficiency rating with 5 plus marks, item (12) being added. March 5, 1948, petitioner was assigned to Code 444A of the same section and thereafter the efficiency rating was GOOD for 1948, due to absence caused by wife's death, and VERY GOOD for 1949-50 (Pet. app. 3B) See brief appendix 16A-67 to 18A *for production and variation of about ten different types of work whereas the four checkers he worked with specialized in only a few types each, also* see Christenson's letter of November 20, 1953 (Pet. app. 2B). *"In my opinion he is an excellent and productive worker."*

On December 7, 1950, the petitioner attended a Forum Meeting 440, together with the Admirals of the Navy Department where he asked questions during question

period, in reference to his combined, interchangeable, multipurpose, Merchant Naval Vessel (Pet. brief bottom of p. 18, and 20A, Line 17) which questions were in line with the subject matter before the forum.

On December 27, 1950, and again January 11, 1951, he was given a * notice he would "receive a performance rating of 'Unsatisfactory' unless your performance is sufficiently improved' (Pet. brief p. 19A, para 3). Thereafter on ** March 26, 1951, petitioner was informed the Bureau was considering termination of his employment for cause, and listed practically every charge in the Navy Civilian Personnel Instructions (Pet. app. 10A, Exhibit 2)

On April 2, 1951, petitioner attempted to answer the various general charges (Pet. app. 12A and Pet. Brief app. 15A) and April 3, 1951, the petitioner received a letter rejecting the answer and setting a date for hearing on April 5, 1951. (Pet. app. 13A). A hearing was held on April 5, 9, 10, 17 and 18, 1951, see transcript of hearing,

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* Without a prior "warning" as required by the Navy Civilian Personnel Instructions, NCPI:5-1 as follows:

> NCPI:5-1. THE WARNING.—The performance rating of 1950 provides that no employee shall be rated unsatisfactory without a ninety-day prior warning and a reasonable opportunity to demonstrate satisfactory performance. The regulations of the Civil Service Commission prohibit the rating of performance as deficient with regard to any work requirement that was not known by the employee or which the employee had not been given a fair opportunity to meet. Before giving a warning for unsatisfactory work performance, an examination should be made to determine the cause of the unsatisfactory performance, and corrective action taken, whenever possible. Should corrective action fail to improve performance sufficiently or should the taking of corrective action be impractical, the immediate or higher supervisor will give the employee the warning, in writing. (Pet. brief App. 19A)

** "*So grossly erroneous as . . . to imply bad faith, . . . not supported by substantial evidence.*" 41 U.S.C.A. § 321 Atlantic Carriers v. U.S., 131 F. Supp. 1.

exhibit 13 of the original record in these proceedings. A letter dated May 12, 1951 (Pet. app. 14A) he received after the close of work on [illegible]14, 1951, the date of termination of the petitioner's [illegible]ment. On May 18, 1951 (Pet. app. 15A) he filed a [illegible]o the Under-Secretary of Navy which was denied [illegible]ember 28, 1951, (Pet. app. p. 16A) which was the [illegible]lministrative action.

STATEMENT OF FACTS

On March 25, 1952, the petitioner, Andrew J. Easter, having exhausted his administrative remedies, (Pet. app. 16A) filed a complaint in the United States District Court for the District of Columbia asking that the Navy Department's action in separating him from the service be held unlawful and that such action be set aside. This action was entitled Andrew J. Easter v. Dan A. Kimball, Secretary of the Navy, Civil Action No. 1307-52. For many months there followed a concerted action on the part of the petitioner to compel the respondent to answer the complaint, notwithstanding the fact that the applicable statute allows the United States Government only sixty days to respond to such a pleading. This is fully explained in the affidavit of petitioner's counsel which was not controverted. (See Pet. brief, App. p. 33A)

On July 7, 1952 Respondent filed a motion for Summary Judgment (almost identical to the one filed in Civil Action No. 1174-54), in Civil Action No. 1307-52. *The motion was denied* (Pet. app. 4A), but the petitioner was granted leave to file an amended complaint seeking his relief under and/or substitute statute, the "Administrative Procedure Act", June 11, 1946 and the "La Follette-Lloyd Act" as amended on June 10, 1948. The amended complaint was filed promptly in Civil Action No. 1307-52, but notwithstanding this fact the Government still would not file an answer to the complaint even after its motion for Summary Judgment had been denied and after the

Court had indicated that the petitioner was in all likelihood entitled to the relief he was seeking (See Pet. p. 21) (partial transcript of Civil Action No. 1307-52), and not until April 7, 1953, was an answer ever filed by the respondent to the original complaint or amended complaint, over a year after the original complaint was filed.

On January 19, 1953, three months before the Government had ever filed an answer to the original complaint, the respondent, Dan A. Kimball resigned as the Secretary of the Navy, and on February 4, 1953, he was succeeded by Robert B. Anderson. During this period of time the petitioner, in his attempt to secure the necessary responsive pleading from the Government to his suit was distracted from the requirement under the Federal Rules of Civil Procedure to substitute a party defendant within a six month period. (See Pet. brief, App. p. 34A) Realizing that the Federal Rules of Civil Procedure require the abatement of an action on the failure to substitute within six months a party defendant, the petitioner consulted the Government about a voluntary dismissal of Civil Action No. 1307-52 with the understanding that a new action would be filed against the then Secretary of Navy, Robert B. Anderson. This was agreed upon, and the Government's Motion to Dismiss, which had been filed at the suggestion of the petitioner, was consented to, the order of dismissal was signed on March 9, 1954 and the new suit, Civil Action No. 1174-54, was filed on March 19, 1954, (Pet. brief, App. 2A, 34A): *ten days after the original suit was dismissed.* (See Pet. Brief-App. p. 43A, 5-6 also see respondent's brief in lower court p. 10 line 10): *"Plaintiff's initial suit . . . as here, was dismissed by consent"*. The Government did not answer this complaint until September 27, 1954. (Pet. brief, App. p. 9A)

On May 2, 1954, the respondent, Robert B. Anderson, left the office of Secretary of the Navy, and on May 3,

1954, the former respondent, Charles S. Thomas, became the Secretary of the Navy. A motion to substitute party defendants was timely filed (See Pet. brief, App. p. 7A); and the order substituting the party defendant was signed July 8, 1954, *said order being consented to by the Government* (See Pet. App. 5A). There was no other activity in the action until after the matter had been pre-tried at which time the Government again filed a Motion for Summary Judgment on the grounds previously submitted in Civil Action No. 1307-52 and on the additional ground that the petitioner was guilty of laches. (Pet. brief, App. p. 12A)

This matter came on to be argued on the respondent's Motion for Summary Judgment on June 26, 1956, together with the petitioner's Opposition filed thereto as well as the petitioner's Cross-Motion for Summary Judgment. In the first instance the respondent said that the petitioner's claim was barred by laches. In support of this claim the government submitted that the first complaint filed by the petitioner abated when he failed to substitute the party defendant when the respondent, Dan A. Kimball, was succeeded in the office of Secretary of the Navy by Robert B. Anderson. The Government then made the misleading statement that the previous action, Civil Action No. 1307-52, had been dismissed by this present action, when in fact it was the petitioner who had asked the respondent to take that action. (See supplemental affidavit of plaintiff's attorney, Pet. brief, App. p. 34A)

The Court had before it on the hearing of this motion in consideration of this contention the affidavit of the petitioner (Pet. brief, App. p. 32A), the affidavit of the petitioner's attorney (Pet. brief, App. p. 33A) and the supplemental affidavit of the petitioner's attorney, (Pet. brief, App. p. 34A).

The Government, on its second point that no statutory right of the petitioner had been denied, relied on the affidavit of George A. Holderness which was Exhibit #1 of the respondent's motion, (This affidavit submitted evidence of certain procedures which had been used in terminating the petitioner, including the letter of March 26, 1951, Exhibit #2 (Pet. app. 10A which set out an array of charges against the petitioner) the answer of the petitioner by letter of April 2, 1951 (Pet. app. 12A) to these charges which was Exhibit #3 & #4 (Pet. brief app. 15A) the notice setting a date for a hearing by letter of April 3, 1951, (Pet. app. 13A) Exhibit #5, the notice of action after the hearing by letter of May 12, 1951, (Pet. app. 14A) which was Exhibit #6, a letter replying to the petitioner's appeal, Exhibit #7 (Pet. app. 15A) a letter dated November 28, 1951 (Pet. app. 16A) Exhibit #9, and a set of the Navy Civilian Personnel Instructions, all being a part of the respondent's Motion for Summary Judgment.

In opposition to this contention the petitioner showed that there had been a statutory denial in a letter mailed to him by the Navy Department dated May 12, 1951, Exhibit #6 (Pet. app. 14A), in that this communication merely stated that after consideration of his answer and after the hearing the Chief of the Bureau of Ships, N. H. Wallin, had "considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close business 14 May, 1951." Petitioner contended that this notice denied him every right to present an appeal that could be fairly objective and effective for the reason that the notice had failed to say what charges had been sustained as it was *definitely known that only an insignificant charge of tardiness was sustained and no evidence* was offered on some charges, but to the contrary the testimony of the Navy Department's own witnesses definitely contradicted any grounds to support the charges. This made all the difference because most of the charges would not permit a dismissal under the Navy Department Regulations.

REASONS FOR GRANTING THE WRIT

I

Material Issues of Fact Presented By the Petitioner Were Not Considered

A. The court should not direct a verdict unless the evidence upon any issue is all on one side, or so overwhelmingly on one side as to leave no room for doubt about what the fact is. (See *Roth* v. *Swanson*, 145 F. 2d 262). TELLEZ v. CANTON RAILROAD, Md. Daily Record, May 20, 1957

"The function of the summary judgment procedure is not to try the case or to decide issues of fact. It is merely to determine whether there is an issue of fact to be tried and if there is none, to cause judgment to be rendered accordingly • • • •"

"If there is any issue of fact un-disposed of and remaining to be determined by the trier of the facts upon the weight of the evidence, summary judgment cannot be granted."

1. One issue is whether, in view of all the evidence, the action of the hearing officer was not a legally arbitrary or capricious one and that the action taken was on *trivia* at best. It is respectfully submitted that this action is to be so characterized and for the following reasons:

a. First attention is directed with emphasis to the petitioner's Report of Efficiency Rating as of March 31, 1950 (Pet. App. 3B) this report is well supported by the evidence in the record filed in the case below and notice of decision of the Efficiency Rating Board (Pet. app. 4B & 14B) and the following partial questions to and answers from supervisors and employees, taken from the transcript of the Removal Hearing, identified in the original record as exhibit #13 together with the necessary copies of brief No. 13,631 being filed herewith.

B. It is respectfully submitted that no evidence is presented in the record to either dispute or refute the above referred to evidence of the petitioner's fellow workmen who were the agencies own witnesses, most of whom were his immediate co-workers, and the chief of the section, Mr. Moore and Mr. Lively, the project engineer. Charles L. Wright, assistant to Mr. Moore, testified that he was responsible for the * charges being preferred against the petitioner. The following is part of Wright's testimony on April 9, 1951, in reference to unsatisfactory performance:

p. 19—we are having difficulty in filling our vacancies.

p. 25—I don't know for a fact. They could have taken as long as three months?—I don't know for a fact. (cf. Pokodner and Britt, who devoted two months of their time to correct a model plan, which was made by someone other than petition (Pet. p. 5).

p. 29—As I have no standards to judge against, I would have to give an opinion.

p. 31—Some of them are higher grades than he is,

p. 34-35—Do you have any of his work that shows those errors? I don't go over his work until it is correct. (See exhibit 13 for petitioner's work in rear of Transcript of Testimony marked 7).

p. 38—*The people who worked with him have told me they kept him continually informed that he wasn't capable of doing the work.* cf. demoralizing office: See (Pet. App. 14-17B) Schedule of performances and index of cases, (Pet. brief, App. 17A) also Easter's testimony, 18 April 1951, p. 1-131 of the original record on file in this proceeding.

p. 42—*We can't get people.*

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* Captain Took, the officer in charge of the entire design section, and Wright's superior, said to petitioner "It was a personal matter and not to worry about it . . . " Petitioner Note Dec/27/50—Diary.

p. 43—I beg your pardon • • • he worked through the whole job to the checking point. (cf. had to have someone to help him).

See (Pet. brief p. 15, Line 14) Petitioner's supervisor, Charles L. Wright stated "Andy you are an asset to this institution, I and the section will assist you in what you are doing."

Reference Insubordination:

p. 59—Words that they have used here as supervisors I had used as relating to the checkers who had worked with the man.

p. 69—Do you know of your own knowledge? No.

p. 70—for these opinions.

p. 71—I had considered his work was satisfactory up until September (cf. ref. June) I didn't get back • • • of the matter until • December. cf. from photostadt of Diary of Petitioner for 1950, next to last page of exhibit no. 13. Reference Wright's testimony as to time element of three months whereas only two months were required, not including annual leave on July 14, and August 1 and sick leave on August 23-25. Following from Diary 6/14-8/30:

June 14 DD927 Model Plan (ink) model 1/24 size of ship 3/16″-1″ of model drawing 3/16 size of model 3/32″=1′ of ship. June 29-30, CV9 model test #0, 1 draft corrected for damage to main dk (from sheet 30 A) checked curves of stability and corrected drafts for test 2c, 3c, 4c,

July 11 continued DD927 model

August 23 finished DD927 model 024906, checked and approved 9/29

• Petitioner overheard Comdr. Ramsey tell Wright about December 10, 1950, that "if you don't have anything on him (Easter) frame him." Petitioner note DC/17/50—Diary.

August 30 corrected to suit Sam

p. 79—No, I don't think he did refuse to correct them. (cf. see petitioner's diary next last page of exhibit 13 ("Aug. 30, corrected to suit Sam").

p. 118—In five years, he hasn't had a promotion? That's right.

p. 119—Do efficiency ratings reflect the caliber of work of an employee? Yes. (cf. petitioner's mark was VERY GOOD). (Pet. app. 3B)

10 April 1951

Questions to Mr. Moore and Answers, Wright's superior.

p. 44—has Easter ever been disrespectful to you? No, he hasn't.

p. 51—did anyone ever come to you and tell you that he was annoying them? I don't recall that anybody ever did.

p. 60—You have a man in your section named Christenson? That's right. What type of worker is he? Well, he's a conscientious sort of fellow.

p. 61—You have a good opinion of him as a man? Oh, yes.

See Christenson's letter of November 20, 1953, (Pet. App. 2B):

"I have worked together with Andrew J. Easter for several years, from about 1945 to his dismissal from the Bureau of Ships. In my opinion he is an *excellent and productive worker.*

Mr. Easter has strong individual views with respect to truth and justice as he sees it."

17 April 1951

Questions to Mr. Lively, the project engineer, and answers. Moore and Wright's superior.

p. 36—Do you have a surplus of engineer employees? There is a scarcity. Very scarce? Yes.

17 April 1951

Questions to Mr. Shapiro & answers,

pg. 38—I have never noticed that he was disrespectful. p. 43—were these changes made willingly? Oh, yes. p. 47—was particularly argumentative or troublesome — ? No, sir. p. 55—ever made a nuisance of himself to you? No, sir. p. 57—any of these discussions as insubordinate on his part? No, sir.

Questions to Mr. Christensen and answers,

p. 80—Easter do things—as a nuisance — ? No.

p. 82—affected your morale? No, sir.

p. 83—affected morale of others — ? No, sir.
——found an abnormal number of errors? No, sir.

p. 84—overall appraisal of—work—? He has done a number of jobs with not much assistance.

—caliber of work—? I would say, good.

p. 92—does that appear like a good job (DD 927) to you? Yes, sir. It looks like a very nice job. p. 95 Is that good work (CVA-58)? p. 96—that was perfect.

p. 97—Is that a good piece of drafting work, (Monograph)? This looks fine to me. p. 101 impress you as being a good piece of work (CVE-105-127)? Yes, That is eminently a good piece of work. p. 103—ever refused to make any corrections — ? No, sir. p. 104. types of work. p. 106 Is he capable of making these calculations? has

done all of those that I said. p. 108 Easter's work is very, very good——. p. 109 When we come to the calculations, — he nevertheless has done it, again and again. — said to his praise, ——, has applied himself and now makes calculations? Oh, yes. p. 110. He had done all these calculations. p. 113 Have had arguments with him? Never. p. 116—did . . some . . elaborate calculations — ? That is right. p. 118 Yes, sir, I can say it is good. I will not therefore say that he canont make a mistake. p. 121 In general, he does all types of work. p. 122—can do this job better than any of us ——.

p. 124 He has been chosen for doing all the later models. p. 131 At times very interested, very interested. p. 137 has gotten along very well with all of us up there.

18 April 1951

Easter p. 1-131—did all types of work—integrations—classified work and purpose—gave up vacation—known as pump handle—work horse—DD 927—exceptional work —no assistance—Le Roy lettered—drawn to exact scale—directive directing 3/40 inch=1 ft.—which had to be converted on a calculating machine to a workable scale in every incident. — did all the different types of work—(PET. BRIEF, app. p. 17A) including calculations—and drafting for 4 different checkers—who specialized—and handed work to me—piecemeal and at various stages.

The Chief of the Bureau of Ships, the supervisors and others were being promoted, some with commendations, on the ingenious efforts (the Baby Flat Top of the Navy) and production of the Petitioner, who was at the same time being intrigued against and beaten down, and is still being discredited throughout these proceedings. (Pet. Brief p. 18 para. 4), (Pet. app. 15B, 17B)

It is alleged that the arbitrary firing of Petitioner was prompted by his asking Questions at 440 forum Dec. 7, 1950 reference his combined, interchangeable, multipurpose Merchant Naval vessel (Pet. brief p. 18, para. 5, & 20A Line 17) and his diligence for submitting same for adoption. (Pet. Schedule of Performance and Index of Cases p. 17B)

II

A Statutory Right of the Petitioner Was Denied In Separating Him From His Position With The Navy Department

1. *Whether Petitioner's Removal Was Legal and Valid*

A. The Court erred in granting the respondent's Motion for Summary Judgment in granting it on the grounds that the petitioner had not been denied any statutory right, the petitioner having been denied a statutory right in that the removal was arbitrary.

The petitioner was denied a statutory right for the reason that after being presented with a long array of charges which under its own Navy Civilian Personnel Instructions were in almost every instance only grounds for some minor sanction on the first alleged violation (as was the case here), the petitioner was then merely notified with a blanket statement that the charges had been sustained and he was being removed. On many of these points no evidence whatsoever had been presented, so it must necessarily be concluded that only certain minor charges could have been sustained, and without knowing which charges these might be it was absolutely impossible for the petitioner to present an effective appeal.

The Government's position that no such right was ever denied was passed upon by the United States District

Court for the District of Columbia *in this very matter* through Judge Luther Youngdahl. This took place when the Government argued a previous motion almost identical to the one which was granted in this cause in the first action filed by the petitioner, Civil Action No. 1307-52, see transcript of proceedings of October 15, 1952. When that motion for Summary Judgment was argued Judge Youngdahl ruled:

> " • • • it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained • • • ."

It is vital to note that not only has the Government once submitted the same question to the Court on Petitioner's discharge, but their previous motion was supported with substantially the same exhibits, affidavits and authorities and despite the fact the Court emphatically denied the motion, it was submitted again.

The Government's position on the jurisdictional question as stated in the Motion to Dismiss admitted that the Court does have jurisdiction in cases where the Federal employee was dismissed contrary to the statutory requirements of Title 5, Section 652, LLOYD-LaFOLLETT Act. As was stated in the case of *Powell* v. *Branman, 91 U.S. App.D.C. 16*, judicial relief is available when those statutory procedures have been departed from,

> "When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may on occasion be obtainable."

The same principal is announced in BLACKMAR vs. UNITED STATES, 128 C. Cls. 693, 120 F Supp. 408

"Plaintiff's discharge was based, in part, on charges which were not set out 'specifically and in detail' (which made it impossible for plaintiff to conduct his defense)" See Stringer vs. U.S., 90 F. supp. 375, 117 Ct. C.1, 30; Witlner vs. U. S., Supra.

DEAK vs. PACE, 88 U. S. App. D. C. 50, 185 F.2d 997.

"What might constitute full information in re case might be irrevelant to circumstances to other cases."

MULLIGAN vs. ANDREWS 93 U.S. App. D. C. 375, 211 F.2d 28

"Must state the 'reasons' for removal.--only findings upon such charges specifically identified, can constitute the 'reasons' required"

The respondent's theory in this matter can be clearly understood by a reading of page 4 of the Government's motion beginning with paragraph #6 and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?" Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these set forth are sufficient.) Then, the Government says that the exhibits show that these things were done. **To state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot, under any circumstance have recourse to the Court**, or that the statute is one of form, and not of substance, because under this theory the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief. BORAK vs. BIDDLE 78 U. S. App. D. C. 374, 141 F.2d 278

"Intent of Congress to assure permancy of tenure—would come to nothing, or else depend upon the whim of the officer in charge"

Although such a contention reduces the statutes to a nulitity it is the position the Government has taken in this matter from the very beginning, even in the first action before it was abated, the one that Judge Youngdahl stated was not correct in the discharge of this employee or any employee who comes within the provision of the statute.

The most important point in this matter is one which the repondent claimed in the Court below was being raised for the first time, but which the transcript of the hearing before Judge Youngdahl conclusively shows was the very contention upon which a previous motion for Summary Judgment in the first action was denied, namely the fact that the agency in discharging the petitioner merely informed him that he was being removed without telling him which of the many charges against him had been sustained. The letter from the Navy Department dated March 26, 1951 (Petitioner's app. 10A) shows the many charges which were hurled against the petitioner. The Navy Civilian Personnel Instructions pages 29-36 show the range of the penalties for the charges. Penalties vary according to the graveness of the charge and the number of times the offense has been committed. Therefore, it would be impossible to prepare an appeal; but the discharged employee here was forced to file what purported to be an appeal but which for the fact he did not know which charges had been actually sustained against him really could amount only to a general prayer for relief to the Secretary of the Navy. In paragraph 9 of the respondent's answer filed April 7, 1953 and the answer to the complaint in this suit, filed September 27, 1954, (Pet. brief app. p. 10A, para. 9) respondent admits, and in fact stated, *"that petitioner was not furnished with*

findings of fact." This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in *Civil Action No. 1307-52:* (See official transcript of proceedings dated October 15, 1952)

> " • • • THE COURT: Don't you think, as long as the Government provided specific charges, and that after that you indicated to him what charges—
> MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.
> THE COURT: Just on the basis of the code?
> MR. STRICKLER: I say it would be advisable.
> THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.
> MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, **but counsel has stated to the Court that there was a frame-up, and they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.**
> THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony."

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

> " • • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government • • •"

Finally, the petitioner submits, for point of emphasis, what Judge Youngdahl said in ruling upon the motion on October 15, 1952:

> "THE COURT: Will you read that letter for me counsel? What is the nature of that?
>
> MR. STRICKLER: It reads:
>
> > 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'
>
> THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances *in a case of this nature the Court should not grant summary judgment, but should let it go to trial.*
> You may draw an Order."

The petitioner respectfully submits that the Government's motion was properly denied when it was first argued before Judge Youngdahl and that at that time the Court pointed out where the Government had failed in properly discharging the petitioner according to law. For the same reason the petitioner now urges this Court that the respondent's motion for Summary Judgment in this case should have been denied.

III

The Petitioner's Claim Was Not Barred By Laches

The petitioner was not guilty of any delay or action that could be deemed to be laches. The lapse of time from the date of the exhaustion of his administrative remedies until the time that the present suit was filed was consumed almost entirely by the respondent's failure to file the responsive pleadings as required by law. That the failure to substitute parties was merely cause for abatement and did not bar the present action, and the statute so states. That the failure to substitute party defendants was caused by the respondent's own negligence in not filing the required responsive pleadings and thereby distracting the petitioner's attention from the necessity of substituting the party defendant.

The Court erred in granting the respondent's Motion for Summary Judgment in granting it on the Government's claim that the action was barred by laches, the petitioner not having been guilty of delay in the entire proceedings either administratively or judicial, and all delay having been the result of the *Government's negligence or willful refusal* to lawfully respond to the pleadings filed by the Petitioner, which delay was the contributing factor in that the *second Secretary of the Navy* was not substituted for the original party-defendant.

Although petitioner's counsel diligently attempted to secure an answer or other appropriate responsive pleadings to the complaint filed in this cause on March 25, 1952, Civil Action No. 1307-52, for unexplained reasons the government did not file such a pleading until July 7, 1952, when a motion almost identical to the instant case was filed. That the motion was ruled on by this Court on October 15, 1952. *See Transcript Easter* v. *Kimball 1307-52.* While the respondent's Motion for Summary Judgment, which the District Court granted dismissing

this action, would lead one to believe that the sum and substance of the action taken by the Court on the original Motion to Dismiss the first action filed, was to require the petitioner to file an amended complaint, this was merely incidental to the Court's ruling which was to deny the respondent's motion in most emphatic terms. (See Order of Court, Pet. app. 4A and Official Transcript of Proceedings in Civil Action No. 1307-52, Pet. pet. p. 18). More important still is the fact that the answer to the petitioner's complaint was not filed until April 7, 1953, although the complaint was filed March 25, 1952; more than one year had elapsed between the filing of the complaint in the first suit and the answer thereto. Thus it clearly shows that the great portion of time between the time of the exhaustion of the petitioner's administrative remedies on the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the respondent. As was stated in the petitioner's opposition to the respondent's motion for Summary Judgment: (See Pet. brief, app. p. 25A-26A).

> "Another misleading statement appearing in respondent's motion is found on page 2 and reads:
>
> > 'It was the Government's motion that the dismissal on the grounds of abatement was granted.'"

The affidavit of petitioner's counsel (Pet. brief, app. p. 33A) clearly shows that the Government filed the motion to dismiss at the suggestion of said counsel when he discovered the failure to substitute the party defendant, **and he told counsel for the Government he would file no objections so the complaint could be declared abated and the present action filed.** With the petitioner's consent to the dismissal of the first action, Civil Action 1307-52, the same was dismissed on March 9, 1954 and on March 19, 1954, *ten days later*, the present complaint was filed;

however, the answer thereto was not filed until September 27, 1954. (Pet. Brief App. p. 2A, 9A)

So, while the respondent claimed in their motion on which the Court dismissed this action that the petitioner took no action from the time that the first complaint was filed until the filing of the complaint in this action which is now on appeal, see transcript Easter v. Thomas, 1174-54 (Pet. brief, app. p. 43A, 5-6); in truth it was the Government which took no action until the petitioner's counsel requested that Civil Action No. 1307-52 be dismissed in order that the complaint in this case could be filed.

Because of the facts set forth above, and because the doctrine of laches is an equitable doctrine, the respondent's points and authorities on the question of laches become totally inoperative. Never was there a more classical case where the maxim,

> "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigant will not be heard to claim equity where his own conduct has been inequitable. *National Fire Insurance Company* v. *Thompson 281 U.S. 331.*

The court below in granting the respondent's motion was declaring the petitioner guilty of laches for failure to substitute a party defendant, when for the greater period of that time the Government had not even filed an answer to the complaint. It should be noted that the very wording of Rule 25d Federal Rules of Civil Procedure in stating that the action abated on failure to substitute within six months makes it extremely clear that had Congress intended this failure to be the end of the cause of action then it would have provided in this rule that the failure to substitute would be a bar to the action and not to an abatement. (Rule 25d, Federal Rules of Civil Pro-

cedure) Moreover, the case of *Snyder* v. *Buck*, 340 U.S. 15, specifically grants the party whose suit has abated the right to start over when there has been failure to substitute. *The question of whether laches is present after a person has started over would in all cases depend on the circumstances and facts surrounding each case.* Had the Supreme Court felt that failure to substitute within a six month period was in and of itself a bar to another action, it certainly would have so stated instead of saying exactly to the contrary that a new action could be brought. *"Petitioner loses her judgment and must start over," lapse of time was not shown to have harmed the Government or proven by the respondent.* cf. *Engineers very scarce* (Pet. p.15 p.30).

GARDNER vs. PANAMA RAILROAD CO. 341 U. S. 934, 185 F.2d 730

(a) *"It should not be determined merely by a reference to and a mechanical application of the statute of limitation, the equities of the parties must also be considered,* p. 30-31.

(b) *Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from mere passage of time, relief should not be denied on the ground of laches.* p. 31.

"There is no showing that respondent's position has suffered."

PELTIER vs. SEATON U. S. Court of App. D. C. No. 13370-57

"On the ground of laches, the District Court rendered summary judgment for the defendants. In all the circumstances we are unable to agree that the appellant was guilty of laches. We think the amended complaint and the answer, and the conflicting affidavits raise issues which should be resolved.

Also see respondent's brief in court below, bottom of page 10, *"on the other hand, if the plaintiff had substituted party defendant within the time allowed—, he would not have been met with the plea of laches despite any Government delay."*

Nor, could the respondent claim that failure to substitute had been detrimental to the Government because the affidavit of the petitioner's counsel (Pet. brief, app. p. 35A) clearly shows that for the greater part of the period in question the petitioner was employed at a salary greater then that he had received as a government employee, and that time was not detrimental to the government except for the loss by the government of the services of the petitioner who was rated a P-5 in 1946 (Pet. brief, app. 45A) yet was doing meritorious services beyond his rank and duties for a P-3 [Trans. p. 122), Transcript of Removal Hearing 17 April 1951]

> "Easter can do this job better than any of us, because he knows ships. He knows drafting. This *combination is rare,* in my opinion, *in the stability section.*"

See (Pet. pet. p. 12) p. 19 "We are having difficulty filling our vacancies", p. 42—"We can't get people" (Pet. pet. p. 15, p. 36) Do you have a surplus of engineer employees? There is a scarcity. Very scarce? Yes.

(A) Procedure is better presented by the Schedule of Performances and Index of Cases (Pet. app. 1A)

(B) It is definitely clear that the course (Schedule of Performances and Index of Cases) will emphasize the mistake Judge Letts made when he granted summary judgment to the respondent as to laches, as to the time element, the time lapsing between the dismissal of the one suit C.A. No. 1307-52 and the filing of the instant suit C.A. No. 1174-54, it was a matter of only *ten days* and both with the consent and cooperation of respondent's

counsel. See Petitioner's brief 43A, 5-6. The Court: "*She is talking about the time that has elapsed after the dismissal of this case and the bringing of a new one.*" Also see Transcript of Proceedings dated June 25, 1956.

(C) The consent of respondent's counsel was further substantiated when the *third Secretary was made Party Defendant* July 8, 1954, (Pet. app. 5A) and again on April 26, 1957, the *fourth Secretary was substituted by consent* (Pet. app. 8A) by declaring *that there was a substantial need for continuing and maintaining this action.* Altho the Government is actually the client of the Solicitor General . . . When the personnel actions of Breinert B. Madsen and Charles L. Wright against the petitioner are weighted against Wright's and the other's testimony it is obvious that, all was of a personal matter (Pet. pet., bottom of pg. 12) devised to further their advancement or was by direction, (Pet. pet., bottom pg. 13) as they now hold high positions in the Navy Department, yet neither has the integrity, background (see Pet. app. 10B, 15B, 17B-19B, initiative, foresight or experience of the petitioner.

The present administrative and Judicial procedures and/or appeals are not corrective or effective, that is why this case is here now.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS,
Attorney for Petitioner
231 St. Paul Place,
Baltimore 2, Maryland.

ANDREW J. EASTER,
In Proper Person
2801 Adams Mill Road, N. W.,
Washington 9, D. C., Apt. 108,
On the Petitioner, Petitioner.

PETITIONER'S SCHEDULE OF PERFORMANCES AND INDEX OF CASES TO APPENDIX A

JUDICIAL PROCEDURE:

United States District Court for the District of Columbia, Andrew J. Easter vs. Dan A. Kimbel, Secretary of Navy, C.A. No. 1307-52

Page

† March 25, 1952, Petitioner's Complaint

July 7, 1952, Respondent's Motion to Dismiss

July 7, 1952, Respondent's Points and Authorities and Exhibit 1-13

August 5, 1952, Stipulation of Andrew J. Easter

August 18, 1952, Petitioner's Objections to Respondent's Motion, with Points and Authorities

‡ October 15, 1952, Hearing before Judge Youngdahl (See Official Transcript of Proceedings)

† October 28, 1952, Order: Respondent's Motion Denied, Leave for Petitioner to File an Amended Complaint, *Case set for trial* ..... 4 A

November 12, 1952, Amended Complaint filed

January 19, 1953, *Dan A. Kimbel, Secretary of Navy Resigned*

February 4, 1953, *Robert B. Anderson appointed Secretary of Navy*

† April 7, 1953, Respondent's Answer to Petitioner's Complaint which was filed March 25, 1952

February 19, 1954, Motion to Dismiss: by *Consent*

† March 9, 1954, Order: *by Consent*
United States District Court for the District of Columbia, Andrew J. Easter vs. Robert B. Anderson, Secretary of Navy, C.A: 1174-54

† March 19, 1954, *Petitioner's Complaint filed: by consent*

May 2, 1954, *Robert B. Anderson, Secretary of Navy, resigned*

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† Pertinent incidents.

‡ Decisive incident.

Refer to the original records filed in this proceeding for all other actions and/or Petitioner's brief filed herewith.

Page

May 3, 1954, *Charles S. Thomas, appointed Secretary of Navy*

July 8, 1954, Petitioner's Motion to substitute party defendant filed

July 8, 1954, * Order substituting party defendant: *by consent* ..... 5 A

September 27, 1954, Respondent's answer to complaint

January 13, 1956, Pre-trial proceedings

February 8, 1956, Respondent's Motion for Summary Judgment, with Points & Authorities and Exhibits 1-13

April 18, 1956, Petitioner's Objections to Respondent's Motion, with Points and Authorities

† April 18, 1956, Affidavit of Petitioner

† April 18, 1956, Affidavit of Petitioner's Counsel

† April 27, 1956, Supplemental Affidavit of Petitioner's Counsel

† June 25, 1956, Transcript of proceeding on motion for summary judgment

June 26, 1956, Order granting respondent's Motion for Summary Judgment ..... 6 A

July 5, 1956, Petitioner's Motion to Set Aside Order and Reinstate Case

October 1, 1956, Order Denying Motion ..... 7 A

October 29, 1956, Notice of Appeal
United States Court of Appeals for the District of Columbia Circuit, October Term 1956. Andrew J. Easter vs. Charles S. Thomas, Secretary of Navy, No. 13,631

April 1, 1957, *Charles S. Thomas, Secretary of Navy, resigned*

April 1, 1957, *Thomas S. Gates, Jr., appointed Secretary of Navy*

April 4, 1947, Petitioner's Motion to substitute party defendant

April 11, 1957, Order denying above motion without prejudice, with leave to renew for "reasons"

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* 3rd Secretary of Navy, 1st Motion to substitute party defendant

Page

April 25, 1957, Petitioner's Motion to substitute party defendant: *by consent*

April 26, 1957, * Order substituting party defendant: *by consent* ..... 8 A

Andrew J. Easter vs. Thomas S. Gates, Jr., Secretary of the Navy, No. 13,631

June 20, 1957, Hearing and Order ..... 9 A

July 3, 1957, Petition for rehearing en banc

July 24, 1957, Petition for rehearing denied, per curium ..... 10 A

October, 1957, This petition

ADMINISTRATIVE PROCEDURE:

Bureau of Ships, Navy Department, Washington, D. C.

† March 26, 1951, Subject: Removal, Exhibit 2 ..... 10 A

April 2, 1951, Petitioner's Answer, Exhibit 3 ..... 12 A

April 2, 1951, Petitioner's Answer, Exhibit 4 (Pet. Brief app. P. 15A)

April 3, 1951, Answer rejected, Notice of Hearing, Exhibit 5 ..... 13 A

April 5, 9, 10, 17, 18, 1951, Hearing, Exhibit 13: Transcript in the Original Record

† May 12, 1951, Subject: Removal, Exhibit 6 ..... 14 A

May 18, 1951, Petitioner's Appeal to Under Secretary of Navy, Exhibit 7 ..... 15 A

† November 28, 1951, Appeal Denied, Exhibit 9 ..... 16 A

* 4th Secretary of Navy, 2nd Motion to substitute party defendant

APPENDIX A

Filed October 28, 1952, Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1307-52

ANDREW J. EASTER
2801 Adams Mill Road, N.W.
Washington, D. C., PLAINTIFF,

vs.

DAN A. KIMBALL
Secretary of the Navy
Room 42710 Pentagon
Washington, D. C., DEFENDANT.

ORDER

• • • •

THIS CAUSE having come on to be heard on the defendant's motion for summary and argument having been had by counsel for the respective parties, it is this 28th day of October, 1952,

ORDERED that the defendant's motion for summary judgment be and the same hereby is denied, and the plaintiff is granted leave to file an amended complaint.

/s/ LUTHER YOUNGDAHL
JUDGE.

Seen:

/s/ FRANK H. STRICKLER
Attorney for Defendant

35 Filed JUL 8 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDERSON
Secretary of Navy

Defendant

ORDER SUBSTITUTING PARTY DEFENDANT

The motion of the plaintiff to substitute party defendant having come on for determination at this term of Court, and it appearing to the Court that Robert B. Anderson, the defendant in this cause, is no longer serving as Secretary of Navy, and he ceased to hold that office within the past six months, and his successor is Charles S. Thomas, it is by the Court, this 8th day of July, 1954,

ORDERED, that the plaintiff's motion to substitute Charles S. Thomas as defendant for Robert B. Anderson in the above entitled cause be and the same is hereby granted.

/s/ Alexander Holtzoff
JUDGE

Consent:
Frank H. Strickler
Asst. U. S. Attorney

• • • •

143 Filed June 26, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER, PLAINTIFF

v.

CHARLES S. THOMAS,
Secretary of the Navy, DEFENDANT

ORDER

Upon consideration of the pleadings, affidavits and record of this Court in Civil Action No. 1307-52, filed herein, defendant's motion for summary judgment to which exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 have been attached hereto and made a part thereof, and plaintiff's cross-motion for summary judgment, it appearing to the Court that there exists no genuine issue of material fact, that plaintiff's removal was legal and valid, and that plaintiff's claim is barred by laches, and that the defendant is entitled to judgment as a matter of law, it is this 26th day of June, 1956,

ORDERED that defendant's motion for summary judgment be and the same is hereby granted, and it is

FURTHER ORDERED that plaintiff's cross-motion for summary judgment be and the same is hereby denied.

/s/ F. DICKENSON LETTS
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon plaintiff by mailing a copy thereof to his attorney, Paul L. O'Brien, 729 15th Street, Washington 5, D. C. this 25 day of June, 1956.

/s/ KITTY BLAIR FRANK
KITTY BLAIR FRANK
Assistant United States Attorney, Attorney for Defendant

• • • •

151 Filed Oct. 1, 1956

ORDER

Upon consideration of plaintiff's motion to set aside order and reinstate cause, it is this 1st day of October, 1956,

ORDERED that the said motion be and the same is hereby denied.

/s/ F. DICKENSON LETTS
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon Andrew J. Easter, P.P., 2801 Adams Mill Rd., N.W., Washington, D.C. and upon Paul L. O'Brien, 729 15th Street, Washington, D.C. this 27 day of September, 1956, by mailing copies thereof to them at those addresses.

/s/ KITTY BLAIR FRANK
KITTY BLAIR FRANK
Assistant United States Attorney

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

April 26, Term, 1957

No. 13,631

ANDREW J. EASTER, APPELLANT,

v.

CHARLES S. THOMAS,
Secretary of the Navy, APPELLEE.

Before: Edgerton, Chief Judge, in Chambers.

ORDER

Upon consideration of appellant's motion to substitute Thomas S. Gates, Jr., as party appellee on the ground that on April 1, 1957, Thomas S. Gates, Jr., succeeded Charles S. Thomas as Secretary of the Navy, and *it having been alleged that there is a substantial need for continuing and maintaining this action, and it appearing that appellee has consented* to said motion, it is

ORDERED that Thomas S. Gates, Jr., be, and he is hereby, substituted as appellee herein in the place and stead of Charles S. Thomas.

Dated: April 26, 1957.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 13631

ANDREW J. EASTER, APPELLANT

v.

THOMAS S. GATES, JR., Secretary of the Navy, APPELLEE

Appeal from the United States District Court for the District of Columbia

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Decided June 20, 1957

Mr. George Washington Williams, of the bar of the Court of Appeals of Maryland, *pro hac vice*, by special leave of Court, for appellant. Andrew J. Easter, appellant, filed a brief *pro se*.

Mr. Hershel Shanks, Attorney, Department of Justice, with whom *Assistant Attorney General Doub*, and *Messrs. Oliver Gasch*, United States Attorney, and *Paul A. Sweeney*, Attorney, Department of Justice, were on the brief, for appellee.

Before EDGERTON, *Chief Judge*, and WILBUR K. MILLER and DANAHER, *Circuit Judges*.

PER CURIAM: The plaintiff, a former employee of the Navy Department, appeals from a summary judgment for the Secretary of the Navy in a suit to set aside the plaintiff's discharge from his employment. We find no error.

Affirmed.

Filed July 24, 1957 Joseph W. Stewart, Clerk

• • • •

ORDER

Upon consideration of appellant's petition for a rehearing in banc, it is

ORDERED by the Court that the petition be, and it is hereby, denied.

Per Curiam.

Dated: July 24, 1957.

EXHIBIT 2

LL/EASTER/A.J.
26 March 1951

To: Andrew J. Easter, Code 444
Subj: Removal

1. The Bureau is at present considering termination of your employment for cause.

2. The specific charges against you are: (1) Unsatisfactory performance (2) Insubordination (3) Disrespectful attitude toward supervision (4) Unreliable attendance and (5) your lack of interest in your work and the overall affect of your expressions upon the morale of other employees.

3. Upon your assignment to the Stability Section in 1946, you were informed by memorandum that certain knowledge was necessary to perform your assigned duties and you were further advised how that knowledge might be obtained. However, to the present date you have acquired so little of the knowledge specified, that you must be assigned routine tasks and cannot be relied upon to satisfactorily complete a task within a reasonable time commensurate with your grade and salary.

4. Your insubordinate and disrespectful attitude toward your supervision has apparently continued for some time. Corrections of errors in your work have resulted in lengthy, heated, time consuming arguments with your supervisors, during which you have frequently, openly and loudly accused them of incapability. On other occasions you have refused to put forth a special effort to meet work deadlines on the claim that your special efforts in the past went unrewarded. You have refused to make modifications on assigned work on the claim that the work should have been assigned correctly in the first place even though it was explained to you that later developments required that modifications be made. Discussions with your supervisors regarding your attitude have resulted on many occasions in threats made by you of law suits, appeals and physical violence.

5. You are frequently absent from your desk without permission for long periods of time. From information received through various sources, it appears much of this time is spent merely visiting other sections of the Bureau to talk to other employees of your grievances against the Bureau and its personnel and to air your personal troubles. You have left business discussions in your own section to pursue this activity of yours. You have frequently spent periods of time away from the building without permission. You apparently consider that your own personal matters take priority over your work assignments. It is considered that your lack of interest in your work and your penchant to speak adversely of the Bureau and its supervisors have a detrimental effect on other employees particularly those unacquainted with the full situation.

6. In January 1951, upon being informed by your supervisor that you would be given an "Unsatisfactory" Performance Rating unless improvement was shown, you defiantly informed him that you were not making any effort to perform satisfactorily, had no intention of improving

and that you hoped that the "Unsatisfactory" rating would bring to a "head" a matter with which you were concerned. Such attitude on the part of any employee cannot be condoned.

7. You have the privilege of replying in writing within five (5) days of the date of these charges to show cause as to why your services should not be terminated and to request a hearing if you so desire. If you desire a hearing, you may be represented by any person of your choice and you may bring witnesses who have a direct kuowledge of the circumstances resulting in the preferral of those charges.

8. Your reply must be in writing and must be received in Code 263 on or before close of business 2 April 1951. Failure to reply or an unsatisfactory reply will result in your termination for cause, effective close of business 10 April 1951.

H. N. Wallin
Chief of Bureau

EXHIBIT 3

6240 Belair Road
Baltimore 6, Maryland
April 2, 1951

Rear Admiral H. N. Wallin
Chief of Bureau
Bureau of Ships
Department of the Navy
Washington 25, D. C.

Dear Sir:

Enclosed you will find my formal answer to your removal notice transmitted to me in letter dated March 26, 1951.

It is respectfully submitted to you for your careful and favorable consideration.

Very truly yours,

/s/ ANDREW J. EASTER
Andrew J. Easter

AJE:ll

EXHIBIT 5

Filed February 8, 1956

Code 263
3 Apr 1951

MEMORANDUM

TO: Mr. Andrew J. Easter, Code 444
Subj: Removal
Ref: (a) BuShips ltr of charges addressed to Andrew J. Easter dated 26 March 1951
Encl: Letter of appointment of hearing board

1. Inasmuch as your reply to Reference (a) is not considered satisfactory, the hearing which you requested is granted and will convene in Room 3030 at 0815 hours, 5 April 1951

C. J. CATER
Captain, USN
Assistant Chief of Bureau
for Administration

73 **EXHIBIT 6**

LL/Easter, A.J.
12 May 1951

From: Chief, Bureau of Ships
To: Mr. Andrew J. Easter
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips

1. By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.

2. You may continue in an active duty status until that time provided your conduct and performance permit.

3. You have the right to appeal this action to the Under Secretary of the Navy via the Chief, Bureau of Ships within ten (10) days from this date.

H. N. Wallin
Chief of Bureau

EXHIBIT 7

Washington, D. C.
May 18, 1951

From: Mr. Andrew J. Easter
To: Chief, Bureau of Ships
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips
(c) BuShips letter 12 May 1951

1. By reference (c) the BuShips notified the undersigned that he was removed for cause effective 14 May 1951.

2. Paragraph 3, reference (c) advises that the undersigned has the right to appeal this action to the Under Secretary of the Navy, via the Chief, Bureau of Ships, within ten (10) days from this date.

3. Reference (c) was personally delivered to the undersigned at 1500 hours 14 May 1951.

4. Subsequent to the delivery of reference (c) the undersigned requested a copy of Record of Hearing and copies of all exhibits submitted at said Hearing, cited in Par. 1, ref. (c). The copy of Record was delivered but copies of exhibits were not. The exhibits are necessary in order to properly prepare my appeal to higher eschelons.

5. The undersigned by this letter exercises his right and notifies the Chief, Bureau of Ships, that said appeal is taken. He requests that all records b prepared and forwarded in compliance with the provisions of NCPI 80, Grievances and Complaints.

/s/ ANDREW J. EASTER
Andrew J. Easter
Appellant

CC: Under Secretary, Navy
OIR Code 220
Pentagon
Washington 25, D. C.

76 EXHIBIT 9

28 Nov 1951

My Dear Mr. Easter:

This is in reply to your appeal from removal action taken by the Bureau of Ships and is the final action in connection with your appeal. The entire record in connection with your case has been carefully reviewed and considered. Each of the charges is supported by competent evidence, both documentary and oral, and it is clearly established that the penalty of removal is appropriate.

Your appeal, therefore, is denied.

Very truly yours,

Francis P. Whitehair
Under Secretary of the Navy

PETITIONER'S SCHEDULE OF PERFORMANCES AND INDEX TO APPENDIX B

	Page
Knud H. Christensen's letter	2 B
Report of Efficiency Rating	3 B
Notice of Decision, Efficiency Rating Board of Review	4 B
Admiral W. F. Halsey's Letter	8 B
Sherman Adams, Assistant to General Eisenhower, letter	8 B
Department of Defense Appropriations Hearing: Petitioner's Statement Re - "Baby Flat Top", "Merchant Naval Vessel Plan" Military Security Without Cost	10 B
Efficiency Rating Board of Review "So-Called All-Purpose Ship"	14 B
Comments from Various Military Agencies ref. "Combined Merchant Naval Vessel"	15 B
Petitioner's Schedule of Performance and "Combined Merchant Naval Vessel"	17 B
Background	19 B

APPENDIX B

1927 - 38th Street, N. W.
Washington 7, D. C.
November 20th, 1953

To whom it may concern,

I have worked together with Andrew J. Easter for several years, from about 1945 to his dismissal from the Bureau of Ships. In my opinion he is an *excellent and productive worker.*

Mr. Easter has *strong individual views with respect to truth and justice* as he sees it, and I feel that his long drawn-out discussion with the management on such points of principle, in which he had become involved, was the underlying reason for his eventual dismissal from the Federal Service.

The above remarks on Mr. Easter's controversy with the Bureau of Ships are entirely those of a spectator.

/s/ Knud H. Christensen
Naval Architect

Standard Form No. 66
August 1948
U.S. CIVIL SERVICE COMMISSION

3B

Form Approved
Budget Bureau No. 50-R012.3.

REPORT OF EFFICIENCY RATING

ADMINISTRATIVE-UNOFFICIAL ( )
OFFICIAL:
REGULAR (X) SPECIAL ( )
PROBATIONAL ( )

As of 3-31-50 based on performance during period from 4-1-49 to 3-31-50

EASTER, Andrew J. (Name of employee)

Eng. Nav. Arch. (Title of position, service, and grade) GS-9

SHIPS (Organization—Indicate bureau, division, section, unit, field station) CODE 444

ON LINES BELOW MARK EMPLOYEE
√ if adequate
− if weak
+ if outstanding

1. Study the instructions in the Rating Official's Guide, C. S. C. Form No. 3823A.
2. Underline the elements which are especially important in the position.
3. Rate only on elements pertinent to the position.
   a. Do not rate on elements in *italics* except for employees in administrative, supervisory, or planning positions.
   b. Rate administrative, supervisory, and planning functions on elements in *italics*.

CHECK ONE:
Administrative, supervisory, or planning ..... ☐
All others ..... ☑

___ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? _____) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED
___ (A) _____
___ (B) _____
___ (C) _____

STANDARD
Deviations must be explained on reverse side of this form

Adjective Rating

___ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? _____) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED
___ (A) _____
___ (B) _____
___ (C) _____

STANDARD
Deviations must be explained on reverse side of this form

Adjective Rating

Plus marks on all underlined elements, and check marks or better on all other elements rated ..... Excellent
Check marks or better on all elements rated, and plus marks on at least half of the underlined elements ..... Very Good
Check marks or better on a majority of underlined elements, and all weak performance overcompensated by outstanding performance ..... Good
Check marks or better on a majority of underlined elements, and all weak performance not overcompensated by outstanding performance ..... Fair
Minus marks on at least half of the underlined elements ..... Unsatisfactory

Rating official.. V.G.

Reviewing official.. VG

Rated by Sebastian L. Wright Jr. (Signature of rating official) ENGINEER (Title) 12 APRIL 1950 (Date)

Reviewed by Carlos L. Moore (Signature of reviewing official) ENGINEER (Title) 13 APRIL 1950 (Date)

Rating approved by efficiency rating committee 2 2 MAY 1950 (Date) Report to employee VERY GOOD (Adjective rating)

U. S. GOVERNMENT PRINTING OFFICE 16—68172-8

Rating shown to employee A.J.E. 4/25/50 (Initial) (Date)

OFFICE OF THE CHAIRMAN

EFFICIENCY RATING BOARD OF REVIEW NAVY DEPARTMENT

Washington 25, D. C.

Docket No.: D-3520-44

NOTICE OF DECISION

Appellant: Mr. Andrew J. Easter
Classification Grade: P-4
Organization Unit: Bureau of Ships

Efficiency rating
as of: March 31, 1944
appealed: Very Good
determined: Very Good

Date of Decision: May 4, 1945

Oral Hearing:
April 27, 1945 and
May 4, 1945

Board of Review Members: Mr. Warren McLaine, Mr. Anthony J. Oliver, Mr. George W. Metzger

Employee Representative: Mr. David R. Glass

Department Representative:
Special Department Representative:
Mr. Donald M. Brown
Lt. L. D. McCord

Witnesses:
Mr. Robert W. Bruce
Mr. S. B. Crosby
Capt. A. Sledge

SUMMARY OF FACTS

After thorough consideration of all the information presented in this case, the Board of Review finds as follows:

1. The appealed rating covers appellant's performance as Engineer (Naval Architect), grade P-4, for the period from April 1, 1943 to March 31, 1944.

2. The following duties and responsibilities are set forth in appellant's official job description:

> "Under general supervision with responsibility for developing designs and general arrangements required for the conversion of merchant vessels to naval auxiliaries:
>
> After conducting extensive engineering investigations and utilizing the original plans of the particular vessel as constructed, develops complete designs of hull arrangements required in order to convert merchant and other vessels to troop transports, repair ships, hospital ships, landing boat carrying vessels, mine layers, gun boats, etc.
>
> These designs are prepared with special attention to incorporation of various features required in order to comply with safety and performance standards established by the Navy but at the same time to permit the conversion to be completed with a minimum of expense and delay. Makes the more difficult calculations and utilizes extensive knowledge of Naval architecture in preparing complete layouts and details of the arrangements for gun replacements, ammunition storage facilities, officer and crew quarters, deck fixtures, sounding rooms, navigational facilities, etc; supervises lower grade engineers and draftsmen as required in completing various phases of the work; assumes responsibility for hull designs of entire ships assigned to this incumbent for conversion.
>
> Examines plans received from Maritime Commission and shipyards making recommendations concerning various hull design features required in order to place a vessel in service to perform a particular function as a naval auxiliary."

3. No change is made in the following element pattern which was used by the department in evaluating appellant's performance (with the department's evaluations indicated): Elements No. 3, Skill in the application of techniques and procedures (√); 4, Presentability of work (√); 6, *Attention to pertinent detail* (√); 8, *Accuracy of final results* (√); 9, Accuracy of judgments or decisions (√); 10, Effectiveness in presenting ideas or facts (√); 11, Industry (+); 12, *Rate of progress on or completion of assignments* (+); 16, Cooperativeness (+); 18, *Resourcefulness* (+); and 19, Dependability (√).

4. Appellant was usually thorough in his designs and drafting work. In the conversion of merchant vessels to Navy auxiliaries it was necessary to see that all the requirements of the Navy Department were met. These requirements were established and varied according to the type of vessel desired and the complement of men assigned to such vessel. Appellant took these factors into consideration and his finished work product was usually accurate.

Appellant's contention that he was the lead man on all the new designs was not supported by the information presented. Appellant was given the responsibility of drawing up preliminary plans for certain new conversions and he usually performed such assignments in a satisfactory manner. However, other naval architects in his section were also assigned to this work.

5. Appellant's contention that he had to be outstanding on Element No. 6 to perform the preliminary design work is without merit since any fully qualified naval architect familiar with Navy procedure on conversion of merchant vessels was able to, and did, perform such design work.

6. Appellant was a *diligent worker and had the ability to perform his work in a rapid manner.* The production records introduced by the department cannot be

accepted as conclusive evidence of appellant's productivity since these records do not reflect all of the work performed by appellant. In addition, the work of the section was not sufficiently heavy to provide appellant with a steady flow of work at all times. Appellant never missed a deadline on any work assigned to him. When it was necessary for him to work overtime to complete a specific assignment he was willing to work overtime to complete it. This necessity did not occur frequently.

7. Appellant was always willing to carry out instructions and assist in the completion of the work of his section. He could be relied upon to perform his work in a creditable manner. His attendance record was not good. Since appellant did not live in the city, it was not always convenient for him to, nor did he always, secure prior approval of leave. However, these absences were not shown to have too seriously affected his work.

8. Appellant was most effective in suggesting possible series of arrangements in the layout of plans where the established methods could not be followed precisely in particular cases. He was also adept in suggesting ways and means of converting vessels with the minimum amount of alterations to existing vessels, thus contributing to the reduction of costs involved in the conversion.

9. No change is made in the evaluation of any of the pertinent or especially important elements.

DECISION

On the basis of the above findings, the Board of Review renders the following decision:

The efficiency rating of "Very Good" is affirmed.

By direction of the Board of Review:

/s/ GEORGE W. METZGER
George W. Metzger,
Chairman

5 March 1945.

Mr. Andrew J. Easter
6420 Belair Road,
Baltimore, Maryland.

My dear Mr. Easter:

I take pleasure in acknowledging the receipt of your most interesting plan for a special combat carrier, and even more, I feel that your interest and effort are most commendable American gestures.

I have turned your plan over to the General Board of the Navy as the proper agency to study the details of your proposed ship in the light of global strategy and the future trend of the war. At the same time I am requesting the Board to advise you as may be appropriate concerning the findings and opinions.

Very sincerely,
/s/ W. F. Halsey

OFFICE OF DWIGHT D. EISENHOWER

Commodore Hotel
New York 17, New York
December 31, 1952

Dear Mr. Easter:

General Eisenhower has asked me to acknowledge your letter of December 29th. He deeply appreciates your interest in improving our ship designs.

Inasmuch as this is General Eisenhower's personal headquarters, and has only a small staff, we do not have the necessary facilities for giving your proposal the proper technical analysis at this time. I suggest you submit this matter to the Navy Department after the new Administration takes office. At that time it will be possible to give it the thorough study which it appears to deserve.

The continued success of our efforts will depend on the interest and participation of every thinking citizen. We are happy to know we can count on you.

Sincerely yours,

/s/ SHERMAN ADAMS
Sherman Adams
Assistant to
General Eisenhower

Mr. Andrew J. Easter
6420 Belair Road
Baltimore 6, Maryland

DEPARTMENT OF DEFENSE APPROPRIATIONS FOR 1958

HEARINGS

Before The

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

First Session

on

H. R. 7665

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR THE FISCAL YEAR ENDING

June 30, 1958, and for other purposes

Printed for the use of the Committee on Appropriations

Testimony and Statement of

ANDREW J. EASTER

Re "BABY FLATTOP" and "MERCHANT-NAVAL VESSEL PLAN"

Wednesday, June 19, 1957—Outside Witnesses,

page 1525 to 1526

"MILITARY SECURITY WITHOUT COST."

DEPARTMENT OF DEFENSE APPROPRIATIONS,

1958

STATEMENT OF ANDREW J. EASTER

BABY FLATTOP SUGGESTED

Mr. EASTER. I will be very brief. I am a former Government employee of the Navy Department, converting ships to naval auxiliaries.

I realize the confusion and lack of experience of people in time of war. I had gotten out an idea that was a beneficial suggestion to help in the problem of transporting military cargo and so forth and the Navy eventually used the baby flattop which you all heard of. I got fired for pressing for the adoption of it.

I am not here speaking for my personal welfare. This happens to be a brief No. 13,631 in the United States Court of Appeals, District of Columbia which brings out very strongly, and has in here, if you read it, comments on this idea by General Eisenhower or President-elect Eisenhower before his first term.

It was sent to the Navy Department with comments from Admiral Halsey.

In any case, the original idea is in the naval service as the baby flattop.

MERCHANT-NAVAL VESSEL PLAN

I further recommend this merchant naval vessel for use by the United Nations. I am just an individual American. I saw how the United Nations members from the small countries worked for the purpose of peace and also to try to help prevent the big boys from getting together.

This ship idea is a merchant-naval vessel. It is the same principle as the baby flattop, but more interchangeable. The baby flattop is a merchant vessel originally converted for aircraft carriers.

At that time, they spent about $5 million to convert the first. I found from the shipyards that they could build my ship at that time for $6 million. This ship is honeycombed; you can hardly sink it.

It won't heel on account of cross flooding and no unsymmetrical sections. My belief is that a ship of this type can carry cargo in peacetime. We are all talking about

defense. Life is more important than money. Yet we have an idea that the Navy and the Government is well aware of, General Eisenhower, Admiral Halsey, and admirals of the Navy Department, and the military forces. If they really want defense at low cost, they would give consideration to this idea. This ship will eliminate two other vessels which they call single-purpose vessels. This ship is large enough to do a 100-percent job. Military cargo requires a lot of floorspace. The ship is designed whereby you could open up the hatches or the decks and carry bulk cargo for merchant and military use.

In peacetime the ship could continue around the world with a tendency to prevent war and pay its own way. Therefore, we could have *military security without cost.*

I had been advised through different people in the Navy Department, pretty near the top, to get this into the Patent Office as a matter of record. The serial number is 788151. It was filed November 26, 1947. In the United

State Patent Office it is called combined merchant and military vessel.

Senator CHAVEZ. What happened after you filed it in 1947? Was the patent issued?

Mr. EASTER. No, sir. We filed an amendment. Of course, I say it is just another one of those things.

FILE IN PATENT OFFICE

Senator CHAVEZ. You might file that with the committee if you want to and we will have the staff to analyze it.

Mr. EASTER. I could not afford to give you 24 sets of these. You could refer to it in the Patent Office and you could have access to it.

Senator CHAVEZ. We want to read it and consider it. That is why I wanted you to send it to us.

Mr. EASTER. Representative Cole came out against $30 million to spend for an atomic vessel. Here is a man against the building of any vessel for exhibition purposes. I got in touch with him, showing him the idea. He said can you get me a letter from someone who is experienced in military forces.

So I inquired of Captain Karig. He said absolutely and definitely we will send that letter. I have inquired of naval architects who helped me to develop this in the Navy Department.

They said "Easter, you know what has happened to you."

I said regardless of that, this is for the interest of the country.

Captain Karig eventually called me up and said his wife refused to let him submit the letter. Of course, he is now deceased.

Senator CHAVEZ. You send whatever information you have. We will be very glad to consider it.

Mr. EASTER. I will mark up some briefs, too. It will be good to read this.

Senator CHAVEZ. If you will give us a chance, we will.

COMPETENCE QUESTIONED

Mr. EASTER. I will call your attention to the things:

The incompetence of personnel management in the Navy Department and the other departments, too. I was there with them. At first they tried to prevent me from working with them and charged me with * diabetes. Up to the present time, I don't have diabetes. But that is what costs money, incompetence.

Also, you see the efficiency mark on here and also the civil service ratings as early as 1946, the P-5, which is a high engineer rating.

---

* *Johns Hopkins Hospital, Baltimore, Maryland, reversed the Government and the Civil Service Commission concurred.*

Maybe eventually we will come to the end that we can practically eliminate the reasons for war.

Senator CHAVEZ. I hope you are giving us some good ideas.

Mr. EASTER: Yes, sir. I am ready at any time.

Senator CHAVEZ. Thank you.

Mr. EASTER. Thank you very much.

EFFICIENCY RATING
BOARD OF REVIEW
NAVY DEPARTMENT

BOARD 1

Washington 25, D. C.

PC-ERA:WCS:flm
Docket No.:D-8324-46

NOTICE OF DECISION

Appellant: Mr. Andrew J. Easter
Classification Grade: P-4
Title of Position: Engineer,
(Naval Architect)

Efficiency rating
as of: March 31, 1946

Date of Decision: Jan. 17, 1947

Date of Hearing: January 16, 1947

PART OF SUMMARY OF FACTS

Pg. 3, para. 14.

"Resourcefulness" was an asset of the appellant. He seldon failed to solve problems that confronted him. Imagination and ingenuity were demonstrated by him in meeting situations as they arose. Fertility of ideas led to proposals for a so-called all-purpose ship, the plans for which were presented for consideration to the

Bureau of Ships, and later to Admiral Halsey and to General Eisenhower. Presentation through official channels was ignored in the submission of this proposal to the aforementioned officers. The rejection of his proposal does not detract from the fact that the appellant's thought was to originate a useful adjunct. Cf. see 7B, to 18B.

W. C. SORRELS
Chairman

COMMENTS FROM VARIOUS MILITARY AGENCIES REFERENCE

"Combined Merchant Naval Vessel"

January 24, 1941,	Petition's superior, Mr. Crosby, Chief of War Plans Section, said *"ship will work"*
January 27, 1942,	Captain Swasey said *"best scheme he ever saw for P T Tender"*
March 9, 1943,	Mr. George Seiker said *"Type of ship was O.K. all can be used for all or any single purpose"*
August 11, 1943,	Memo, Colonel Hicks *"Features are provided would have considerable in their favor for use in an area where enemy naval forces would oppose combat loading"*
September 16 & 23, 1943,	Lt. Pope, T P Boat, Maintenance, 1st Endorsement
September 23, 1954,	From Bushipsi *"your interest in naval design matters is commendable"*
December 6, 1944,	Captain Solberg, Chairman Beneficial Suggestion Committee BUSHIPS, said: petitioner *"was entitled to something"*

January 25, 1945,	Chairman Beneficial Suggestion Committee stated *"Ship was sound and practical . . ."*
February 5, 1945,	Captain Solberg said *"ship idea isn't dead by any means"*
February 6, 1945	Enclosure A & B "Design Exhibits" to Navy Department Board of Awards
August 15, 1946,	Mr. John C. Niedermair, Chief, Preliminary Design, Bureau of Ships, said *"merchant aircraft carrier by Burntisland, British Ship Yard, was an infringement on petitioner's idea"*
August 21, 1946,	At conference with Commander Palmer et al., Wright protested commanders statement about weight estimate and insisted *petitioner's estimate was correct.*
February 6, 1948,	Mr. Charles C. Gager of Preliminary Design, Bushipe, said *"they are using your idea piece by piece"*
July 6, 1950,	Captain Karig *"very interesting"*
July 25 & 27, 1950,	Captain Karig *"Wanted Admiral Sherman to see ship"*
September 7, 1950	Bureau of Aeronautics stated *"ships were built to accommodate planes, said unsuitable vessels were forced on them, this is what we need"*
September 21, 1950,	Captain Morgan said *"shipping interest should not object, we are paying for everything anyway"*
October 21, 1950,	The Washington Star stated Admiral Cochran said *"20 knot ships were useful in peace and invaluable in war"*
November 2, 1950,	Captain Took stated Captain Morgan said *"it was interesting but they would have to change the law and to get the shipping people interested"*

PETITIONER'S SCHEDULE OF PERFORMANCE AND "COMBINED MERCHANT NAVAL VESSEL"

United States Patent Office, Washington, D. C.
November 26, 1947, Serial No. 788151,

Navy Department, Bureau of Ships, War Plans Section Code 459
Via Beneficial Suggestion Committee on Awards to
Civilian Employees, and Official Channels

January 16, 1939,	Appointed Chief Engineering Draftsman SP8
January 20, 1940,	Letter to Chief of Naval Operations, Admiral H. R. Stark
August 29, 1940,	Letter from Chief of Bureau of Ships in reference to letter to Admiral H. R. Stark, United States Navy
June 25, 1941,	Submitted sketch to Commander Philips of Bureau of Inventions, Bureau of Ships
August 10, 1942,	Letter via official channels, Subject: Beneficial Suggestion "Merchant Ship Design"
August 17, 1942,	Commander Philips, office. Research and Patents, Bureau of Ships
December 30, 1943,	Submission "Combined Merchant and Naval Vessel" Form 94 (Rev.) to Bureau of Ships Beneficial Suggestions Committee
June 13, 1943,	Letter from Technical Director of U. S. Maritime Commission
April 3, 1943,	Mr. Thurston, Assistant to Chief Design Section said "to submit plan"
April 8, 1943,	Submitted memo "Design of Combat Carrier, Combination Troop, Torpedo Boat and Aircraft Carrier, for Triphibian Operations"
July 6, 1943,	Captain Martin forwarded plan to War Department, Army Services Office.
March 1, 1944,	To National Inventors Council
May 6, 1944,	Recommendation by Commander Martin to Commander Mumma of the Secretaries Office, to Admiral King, for investigation.
May 27, 1944,	To Bureau of Aeronautics, Ship Installations
May 30, 1944,	Captain Metzel, requested prints for personnel study
July 21, 1944,	Captain Metzel "wants prints for personnel makeup"
December 6, 1944	Captain Solberg, Chairman of Navy Department's Board of Awards Committee said "he would support resubmission of ship plans to Navy Department Board of Awards Committee"

December 15, 1944	Lt. Richard, Navy Department, Board of Awards, requested petitioner to "prepare material for submission to Board"
January 10, 1945.	Captain Solberg, "to have model made"
January 19, 20, 1945,	Design Display, submitted
February 21, 1945,	Plans to Admiral Halsey
March 5, 1945,	Letter from Admiral Halsey
April 12, 1945,	Navy Department "will arrange a formal hearing to present ship to General Board"
September 26, 1945,	Congressman Vinson, Chairman of Naval Affairs Committee
November 13, 1945	Secretary of State Byrnes, Marshall, Chief of Staff of New Development Weapons, Joint Chief of Staff, Bethlehem Ship
April 29, 1946,	Office abolished, assigned to Damage Stability Section Code 456, Section 447-M, Scientific
October 22, 1946,	Sam, Wright and Heiser congratulated petitioner on his work, Floodable Length and Damage Stability of LSD, signed by Captain Palmer, Honsigner and Watson "(Presentability, neatness and clearness)"
* January 16, 1947,	Efficiency Rating Hearing, Comdr. Sledge said: "this man is ingenious and saves the Navy and the government money."
November 26, 1947	Filed letters of Patent, Serial 788151 in U. S. Patent Office, Washington, D. C. "Combined Merchant and Naval Vessel"
November 26, 1947	Notice from U.S.C.S.C. filed: Engineer (N.A.) P.5
July 6, 1950,	Captain Karig (Navy historical writer)
September 8, 1950,	Louis Johnson, Secretary of Defense
November 17, 1950,	Letter to Trigve Lie, Secretary General of the United Nations
* December 7, 1950,	Admiral Cockran, at Forum 440, "Ship Design of Future"
* December 27, 1950,	Notice of Unsatisfactory Performance. Petitioner showed it to Capt. Took, he said "*it was a personal matter and not to worry about it.*"
March 17, 1951,	Letter Patent Amended
* March 26, 1951,	Letter from Admiral Wallin. Subject: Removal
* May 14, 1951,	Notification of Personnel Action: Removal, *146 hours accrued annual leave and 320 hours accrued sick leave as of 5-15-51*

December 29, 1951,	Letters of Patent to President Elect Eisenhower
December 31, 1952,	Letter from Sherman Adams, assistant to President Eisenhower
August 3, 1953,	To Sherman Adams, Assistant to President Eisenhower
January 22, 1954,	Charles E. Wilson, Secretary of Defense
June 1, 1954,	From National Security Council "does not come within our purview"
September 24, 1954,	To Joint Chiefs of Staff
September 28, 1954,	Chief Operation Fleet Service & Maritime
June 19, 1957,	Statement before the Subcommittee of the Committee on Appropriations, United States Senate, H.R. 7665, Re "Baby Flat Top" U.S. Navy, and the "Merchant Naval Vessel" for the United Nations for military security without cost.

Background: Trained to observe—18 years of study and teaching, with honor, of the Fine and Applied Arts, which made it possible to design & develop ships, and other structures, and the preparation of this petition. The original of this reproduction is one of petitioner's best works.

Sincerely,



Petitioner note Jan. 16/39-57—Diary and various other legislative committees on atomic, military and/or naval affairs, all of which was instituted on the petitioner's own time and expense.